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19 CHURCH OF SCIENTOLOGY
20 INTERNATIONAL

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HUB LAW OFFICES

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

21 CHURCH OF SCIENTOLOGY)
22 INTERNATIONAL, a California not-)
23 for-profit religious corporation,)
24 Plaintiff,)
25 vs.)
26 GERALD ARMSTRONG; DOES 1 through)
27 25, inclusive,)
28 Defendants.)

) CONSOLIDATED CASE NO.
) 157 680
) SEPARATE STATEMENT OF
) UNDISPUTED FACTS IN SUPPORT
) OF PLAINTIFF'S MOTION FOR
) SUMMARY ADJUDICATION OF THE
) FOURTH, SIXTH AND ELEVENTH
) CAUSES OF ACTION OF
) PLAINTIFF'S SECOND AMENDED
) COMPLAINT AND EXHIBITS
) THERETO
)
) DATE: December 23, 1994
) TIME: 9:00 a.m.
) CALENDAR: Law & Motion
) DEPT: 1
)
) TRIAL DATE: May 18, 1995
)

23 AND RELATED CROSS-ACTIONS AND
24 CONSOLIDATED ACTION

1 Church of Scientology International ("the Church") submits
2 this statement of undisputed material facts in support of the
3 Church's Motion for Summary Adjudication of the fourth, sixth and
4 eleventh causes of action of plaintiff's second amended
5 complaint.

6
7 I. The Church is entitled to summary adjudication of the Fourth
8 Cause of Action because there is no dispute that the parties
9 entered into a written agreement, that the Church performed
10 all of its obligations pursuant to the agreement, that
11 Armstrong breached the agreement by providing a declaration
12 which purports to discuss his experiences with Scientology
13 to anti-Church litigants Vicki and Richard Aznaran, and that
14 the Church is entitled to liquidated damages of \$50,000.00
15 for this breach.

16
17 UNDISPUTED FACT

18 1. Gerald Armstrong entered into a
19 confidential Mutual Release of All
20 Claims and Settlement Agreement
21 ("Agreement") with Church of
22 Scientology International ("the
23 Church") on December 6, 1986.

17 EVIDENTIARY SUPPORT

18 1. Request for Judicial
19 Notice Exhibit A,
20 Verified Amended
21 Complaint (hereinafter
22 "Complaint"), ¶¶ 1 and 2;
23 Request for Judicial
24 Notice Exhibit B, Answer
25 of Gerald Armstrong and
26 the Gerald Armstrong
27 Corporation to Amended
28 Complaint (hereinafter

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"Answer"), ¶¶ 1 and 2;
Exhibit 1A, Deposition of
Gerald Armstrong, Vol
III, Oct. 7, 1992, 301:2-
12; 302:1-18, and Exhibit
6 thereto Exhibit 1B;
Mutual Release of All
Claims and Settlement
Agreement, page 16.

2. The Agreement was signed on behalf
of the Church by its President,
Reverend Heber Jentsch.

2. Exhibit 1B, Mutual
Release of All Claims and
Settlement Agreement,
page 16.

3. The Agreement was signed by
Armstrong's attorney, Michael Flynn,
approving it as to form and content.

3. Exhibit 1B, Mutual
Release of All Claims and
Settlement Agreement,
page 16.

4. Armstrong signed and initialed the
Agreement in the presence of his
counsel, Michael Flynn, and witnesses
Michael Sutter and JoAnn Richardson.
The signing was recorded by video
camera.

4. Exhibit 1A,
Deposition of Gerald
Armstrong, Vol I, 172:9-
12, Exhibit 1C
Declaration of Larry
Heller, ¶ 3, and Exhibits
A and B thereto.

1 5. Prior to signing the Agreement,
2 Armstrong discussed its terms with
3 his attorneys, Michael Flynn and
4 Michael Walton. He also discussed it
5 with a third attorney, Julia
6 Dragojevich.

7
8 6. At the time he signed the
9 Agreement, in the presence of his
10 counsel and live witnesses, Armstrong
11 had the following exchange with CSI
12 attorney, Larry Heller:

13 LARRY HELLER: O.K. Ah, Mr. Armstrong,
14 I'm going to ask you to sign three
15 documents, ah, a Mutual Release of
16 All Claims and Settlement Agreement,
17 and two separate affidavits. Prior
18 to doing so, however, I would like to
19 ask you some questions with regard to
20 those documents, um-hm, excuse me,
21 which I would like you to answer
22 freely and honestly, if you would.
23 Ah, first of all, have you had a
24 chance to, ah, completely and
25 comprehensively review and read these
26 documents?

27 ARMSTRONG: Yeah.

28 HELLER: O.K. Have you had a chance
to discuss these documents with your
attorney, Mr. Flynn?

ARMSTRONG: Yes.

HELLER: Has Mr. Flynn explained these
documents as well as the legal and
factual ramifications to you, legal
and practical ramifications to you to
your satisfaction?

ARMSTRONG: Uh, I think so, yes.

5. Exhibit 1A,
Deposition of Gerald
Armstrong, Vol. I, June
24, 1992, 37:14-20;
38:11-23; 69:18-70:16.

6. Exhibit 1C,
Declaration of Larry
Heller, ¶¶ 4 and 5,
Exhibit A thereto, and
Exhibit B thereto, 1:19-
2:18.

1 HELLER: O.k. Well, do you have any
question of that whatsoever?

2 ARMSTRONG: No, I have no current
3 questions about it.

4 HELLER: O.k. Very good. You are
going to sign these of your own free
5 will?

6 ARMSTRONG: Yes.

7 HELLER: O.k. You are not suffering
from any duress or coercion which is
8 compelling you to sign these
documents?

9 ARMSTRONG: No.

10 HELLER: All right. You are not
11 presently under the influence of
alcohol or any medication,
12 prescription or otherwise, which
would impede your ability to
13 comprehend the legal and factual
intent of these documents?

14 ARMSTRONG: No.

15
16 7. Armstrong received a portion of a
17 total sum paid to his attorney,
18 Michael Flynn, in settlement of all
19 claims of Mr. Flynn's clients.
20

7. Request for Judicial
Notice Exhibit A,
Complaint, ¶ 13; Request
for Judicial Notice,
Exhibit B, Answer, ¶ 13;
Exhibit 1B Mutual Release
of All Claims and
Settlement Agreement,
¶ 3.

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26 8. Armstrong received approximately
27 \$800,000.00 from Michael Flynn as his
28

8. Exhibit 1D,
Declaration of Graham

1 portion of the total settlement sum
2 paid by CSI to Mr. Flynn for Flynn's
3 settling clients.

Berry, and Exhibit B
thereto; Exhibit 1E Marin
Independent Journal,
November 11, 1992,
article entitled, "Is
Money The Root of Our
Problems?"

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9 9. Paragraph 7(D) of the Agreement
10 provides that: "Plaintiff agrees
11 never to create or publish or attempt
12 to publish, and/or assist another to
13 create for publication by means of
14 magazine, article, book or other
15 similar form, any writing or to
16 broadcast or to assist another to
17 create, write, film or video tape or
18 audio tape any show, program or
19 movie, or to grant interviews or
20 discuss with others, concerning their
21 experiences with the Church of
22 Scientology, or concerning their
23 personal or indirectly acquired
24 knowledge or information concerning
25 the Church of Scientology, L. Ron
26 Hubbard or any of the organizations,
27 individuals and entities listed in
28 Paragraph 1 above. Plaintiff further

9. Exhibit 1B Mutual
Release of All Claims and
Settlement Agreement, ¶
7(D).

1 agrees that he will maintain strict
2 confidentiality and silence with
3 respect to his experiences with the
4 Church of Scientology and any
5 knowledge or information he may have
6 concerning the Church of Scientology,
7 L. Ron Hubbard, or any of the
8 organizations, individuals and
9 entities listed in Paragraph 1 above.
10 Plaintiff expressly understands that
11 the non-disclosure provisions of this
12 subparagraph shall apply, inter alia,
13 but not be limited, to the contents
14 or substance of his complaint on file
15 in the action referred to in
16 Paragraph 1 hereinabove or any
17 documents as defined in Appendix "A"
18 to this Agreement, including but not
19 limited to any tapes, films,
20 photographs, recastings, variations
21 or copies of any such materials which
22 concern or relate to the religion of
23 Scientology, L. Ron Hubbard, or any
24 of the organizations, individuals, or
25 entities listed in Paragraph 1 above.
26 The attorneys for Plaintiff, subject
27 to the ethical limitations
28 restraining them as promulgated by

1 the state or federal regulatory
2 associations or agencies, agree not
3 to disclose any of the terms and
4 conditions of the settlement
5 negotiations, amount of the
6 settlement, or statements made by
7 either party during the settlement
8 conferences. Plaintiff agrees that
9 if the terms of this paragraph are
10 breached by him, that CSI and the
11 other Releasees would be entitled to
12 liquidated damages in the amount of
13 \$50,000 for each such breach. All
14 monies received to induce or in
15 payment for a breach of this
16 Agreement, or any part thereof, shall
17 be held in a constructive trust
18 pending the outcome of any litigation
19 over said breach. The amount of
20 liquidated damages herein is an
21 estimate of the damages that each
22 party would suffer in the event this
23 Agreement is breached. The
24 reasonableness of the amount of such
25 damages are hereto acknowledged by
26 Plaintiff.

27
28 10. At the time the Agreement was

10. Exhibit 1B, Mutual

1 signed, it was impossible to
2 calculate the likely cost to the
3 Church and the other settling
4 entities should Armstrong breach the
5 provisions of paragraph 7(D).

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8 11. On May 16, 1994, the Second
9 District Court of Appeal affirmed the
10 trial court's order granting the
11 Church a preliminary injunction.

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18 12. In its May 16, 1994 Opinion, the
19 Second District Court of Appeal found
20 that "Armstrong did not deny the
21 charged conduct but asserted the
22 settlement agreement was not
23 enforceable for various reasons,
24 primarily that it was against public
25 policy and that he signed it under
26 duress."

27
28 13. In its May 16, 1994 opinion, the

Release of All Claims and
Settlement Agreement, ¶
7(D) Exhibit 1C,
Declaration of Larry
Heller, and Exhibits A
and B thereto.

11. Request for Judicial
Notice Exhibit C, May 16,
1994 Court of Appeal
Opinion, passim; Request
for Judicial Notice
Exhibit D, May 28, 1992
Order granting
preliminary injunction,
passim.

12. Request for Judicial
Notice, Exhibit C, May
16, 1994 Court of Appeal
Opinion, p. 5.

13. Request for Judicial

1 Second District Court of Appeal
2 summarily rejected Armstrong's
3 proffered affirmative defenses, which
4 included arguments, inter alia, that
5 the Agreement was contrary to public
6 policy; signed under duress; violated
7 various constitutional provisions;
8 restrained trade; lacked mutuality
9 and obstructed justice; and that CSI
10 had actually and/or constructively
11 defrauded Armstrong and had unclean
12 hands.

13
14 14. Armstrong argued to the Court
15 Appeal that some provisions of the
16 Agreement violated the First
17 Amendment. The Court of Appeal
18 rejected this argument, holding,
19 "Although Armstrong's 'Freedom of
20 Speech' is affected, it is clear that
21 a party may voluntarily by contract
22 agree to limit his freedom of speech.
23 (See In re Steinberg (1983) 148
24 Cal.App.3d 14, 18-20 [filmmaker
25 agreed to prior restraint on
26 distribution of film]; ITT Telecom
27 Products Corp. v. Dooley (1989) 214
28 Cal.App.3d 307, 319 [Employee's

Notice Exhibit C, May 16,
1994 Court of Appeal
Opinion, Exhibit 1F, pp.
9-10; Appellant's Opening
Brief, pp. 24-49.

14. Request for Judicial
Notice, Exhibit C, May
16, 1994 Court of Appeal
Opinion, Exhibit 1F, pp.
9 - 10; Appellant's
Opening Brief, pp. 20 -
25.

1 Agreement not to disclose
2 confidential information; 'it is
3 possible to waive even First
4 Amendment Free Speech rights by
5 contract']; Snepp v. United States
6 (1980) 444 U.S. 507, 509, fn 3 "[book
7 by CSI employee subject to
8 prepublication clearance by terms of
9 his employment contract]."

11 15. Vicki and Richard Aznaran are
12 former Church members and, in 1991,
13 were actively litigating against
14 several Churches of Scientology.
15 Vicki J. Aznaran, et al. v. Church of
16 Scientology of California, et al.,
17 USDC Central District of California
18 CV 88-1786 JMI(Ex) (hereinafter the
19 "Aznaran case").

15. Request for Judicial
Notice, Exhibit A,
Complaint, ¶ 18; Request
for Judicial Notice,
Exhibit B, Answer, ¶ 18;
Exhibit 1A, Deposition of
Gerald Armstrong Vol. II,
July 22, 1992, 183:1-3,
Request for Judicial
Notice Exhibit E,
Complaint in the United
States District Court for
the Central District of
California, Case No. CV
88-1786 JMI(Ex), Vicki J.
Aznaran, et al. v. Church
of Scientology of
California, et al.

1 16. In July, 1991, while attorney
2 for the Aznarans, former Church
3 attorney Joe Yanny "hired Gerry
4 Armstrong as a paralegal to help
5 [Yanny] on the Aznaran case. . ."

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10 17. In August, 1991, Armstrong began
11 helping Ford Greene as a paralegal
12 for the Aznarans. Greene tried to
13 convince the Aznarans to pay him a
14 monthly stipend for Armstrong, so
15 that Armstrong could work on the
16 Aznaran case.

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19 18. On August 26, 1991, Armstrong
20 signed a declaration for filing in
21 the Aznaran case containing
22 statements regarding his alleged
23 experiences with and knowledge of the
24 Church and L. Ron Hubbard.

16. Exhibit 1G,
Transcript of Proceeding
RTC et al. v. Yanny et
al., Case No. BC 033035,
August 6, 1991, 25:19-21,
Exhibit 1H, Declaration
of Joseph A. Yanny, July
31, 1991, 4:21-22.

17. Exhibit 1I,
Declaration of Vicki
Aznaran dated May 19,
1994, p. 5, ¶ 7 Exhibit
1J, Armstrong's Responses
to CSI's Requests for
Admission, July 21, 1994,
Request No. 4.

18. Exhibit 1A,
Deposition of Gerald
Armstrong Vol III,
322:19-323:7, 324:5-10,
324:21-23, 325:1-10,
325:17-326:3, 327:8-10,
and Exhibit 11 thereto,
Exhibit 1K, Armstrong
Declaration, August 26,
1991, Request for

Judicial Notice, Exhibit A, Complaint, ¶¶ 37 and 59; Request for Judicial Notice, Exhibit B, Answer, ¶¶ 37 and 59.

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7 III. CSI is entitled to summary adjudication of the Sixth Cause
8 of Action because there is no dispute that the parties
9 entered into a written agreement, that CSI performed all of
10 its obligations pursuant to the agreement, Armstrong
11 breached the Agreement by providing interviews to the media,
12 and that CSI is entitled to liquidated damages of \$100,000
13 for these breaches.

14 CSI incorporates herein Undisputed Facts and Evidentiary
15 Support Nos. 1 to 18, supra.

16 UNDISPUTED FACT

EVIDENTIARY SUPPORT

17 19. In 1992, Armstrong had twelve
18 contacts with media representatives,
19 two of which were interviews with
20 reporters from the Cable News Network
21 ("CNN") and The American Lawyer
22 magazine.

19. Exhibit 1A,
Deposition of Gerald
Armstrong Vol III,
341:24-342:16.

23
24 20. On March 20, 1992, Armstrong and
25 his counsel, Ford Greene, provided a
26 videotaped interview to reporter Don
27 Knapp of CNN.

20. Request for Judicial
Notice, Exhibit A,
Complaint, ¶ 44; Request
for Judicial Notice
Exhibit B, Answer, ¶ 44;

1 III. CSI is entitled to summary adjudication on the Eleventh
2 Cause of Action because there is no dispute that the parties
3 entered into a written agreement, that CSI performed all of
4 its obligations pursuant to the agreement, Armstrong
5 breached the Agreement by providing a declaration which
6 purports to discuss his experiences with the Church of
7 Scientology to anti-Church litigant David Mayo and his
8 counsel, and that CSI is entitled to liquidated damages of
9 \$50,000 for this breach.

10 CSI incorporates herein Undisputed Facts and Evidentiary
11 Support Nos. 1 to 18, supra.

12
13 UNDISPUTED FACT

EVIDENTIARY SUPPORT

14
15 23. On May 27, 1992, Armstrong met
16 with attorneys Jerold Fagelbaum and
17 Gary Bright, attorneys for David Mayo
18 and the Church of the New
19 Civilization in the consolidated
20 cases of Religious Technology Center
21 et al. v. Robin Scott et al., United
22 States District Court for the Central
23 District of California, Case No.
24 CV 85-711 JMI(Bx), and Religious
25 Technology Center et al. v. Larry
26 Wollersheim et al., United States
27 District Court for the Central
28 District of California, Case No.

23. Request for Judicial
Notice, Exhibit A,
Complaint, ¶ 68; Request
for Judicial Notice,
Exhibit B, Answer, ¶ 68;
Exhibit 1A, Deposition of
Gerald Armstrong Vol II,
214:20-216:24.

1 CV 85-7197 JMI(Bx). At the time,
2 Fagelbaum and Bright were litigating
3 a cross-claim in that case against,
4 inter alia, CSI.

5
6 24. At his meeting with Fagelbaum and
7 Bright, Armstrong executed a
8 declaration purporting to
9 authenticate an affidavit describing
10 Armstrong's alleged experiences with
11 the Church.


24. Request for Judicial
Notice, Exhibit A,
Complaint, ¶¶ 68 and 69;
Request for Judicial
Notice, Exhibit B,
Answer, ¶¶ 68 and 69;
Exhibit 1A, Deposition of
Gerald Armstrong, Vol II,
219:17-226:25, and
Exhibit 8 thereto,
Declaration of Gerald
Armstrong, May 27, 1992.

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19 Dated: November 16, 1994

Respectfully submitted,

Laurie J. Bartilson
BOWLES & MOXON

WILSON, RYAN & CAMPILONGO

20
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24 By: 
Andrew H. Wilson

25 Attorneys for Plaintiff
26 CHURCH OF SCIENTOLOGY
INTERNATIONAL
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